

Minneapolis Planning Department
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MEMORANDUM

DATE: October 16, 2003

TO: Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

FROM: Lonnie Nichols, City Planner

SUBJECT: Appeal of the 9-22-03 decision of the City Planning Commission on extended hours of operation of Sky Cafe and Downtown Tobacco by Michael Rosentiel, Harvey's Bar and Grill.

Michael Rosentiel has filed an appeal of a September 22, 2003 decision of the City Planning Commission. The appeal is associated with the CPC's decision to grant a Conditional Use Permit for extended hours of operation (from 7:00 a.m. to 3:00 a.m. Sunday through Thursday and 7:00 a.m. to 4:00 a.m. Friday and Saturday) for the Sky Cafe and Downtown Tobacco located at 8 North 5th Street and 428 Hennepin Avenue.

Mr. Rosentiel has appealed the CPC decision and is asking the Zoning and Planning Committee to reconsider the granting of a provisional conditional use permit for extended hours based on the public safety performance record of the Sky Cafe and Downtown Tobacco. The staff report, transcribed minutes, and recommended decision from the September 22, 2003 CPC, notice of appeal from Michael Rosentiel, and letters of concern from Dario Anselmo, President of the Warehouse District Business Association are attached.

On September 22, 2003, in a split-vote, the City Planning Commission approved the conditional use permit application for extended hours of operation for the Sky Cafe and Downtown Tobacco (BZZ 1380) located at 8 North 5th Street and 428 Hennepin Avenue for a trial period of one year, with review before the Planning Commission after a year.

5. Sky Café-DT Tobacco (BZZ-1340, Ward 5) 428 Hennepin Avenue (Inichols)

A. Conditional Use Permit

Application by Abro, LLC, dba the Sky Cafe and Downtown Tobacco for a conditional use permit for extended hours of operation (from 7:00 a.m. to 3:00 a.m. Sunday through Thursday and 7:00 a.m. to 4:00 a.m. Friday and Saturday) at 428 Hennepin Avenue

Motion: The City Planning Commission adopted the findings and **approved** the conditional use permit application for extended hours of operation for Downtown Tobacco (BZZ 1380) located at 428 Hennepin for a trial period of one year, with review before the Planning Commission after a year, subject to the following conditions:

1. The tobacco shop shall comply with the following applicable Specific Development Standards of section 536.20 of the zoning code:
 - (a) Back-lighted signs, back-lighted awnings, portable signs, temporary signs and freestanding signs shall be prohibited.
 - (b) The window and door area of any existing first floor facade that faces a public street or sidewalk shall not be reduced, nor shall changes be made to such windows or doors that block views into the building at eye level.
 - (c) The use of bars, chains or similar security devices that are visible from a public street or sidewalk shall be prohibited.
 - (d) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

B. Conditional Use Permit

Application by Abro, LLC, dba the Sky Cafe and Downtown Tobacco, located at 428 Hennepin Avenue for a conditional use permit for extended hours of operation (from 7:00 a.m. to 3:00 a.m. Sunday through Thursday and 7:00 a.m. to 4:00 a.m. Friday and Saturday) at 8 North 5th Street.

Motion: The City Planning Commission adopted the findings and **approved** the conditional use permit application for extended hours of operation for the Sky Cafe (BZZ 1380) located at 8 North 5th Street for a trial period of one year, with review before the Planning Commission after a year, subject to the following conditions:

1. The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.
2. The extended hours are for the ground floor seating area only.

Minneapolis City Planning Department Report

Conditional Use Permit Application

BZZ – 1340

Date: September 22, 2003

Applicant: Abro, LLC

Address Of Property: Sky Cafe-8 North 5th Street and Downtown Tobacco-428 Hennepin Avenue

Date Application Deemed Complete: August 29, 2003

End of 60 Day Decision Period: October 29, 2003

Contact Person And Phone: Randall Tigue, Attorney at Law, 3960 Minnehaha Avenue South, Minneapolis, MN 55406, 612-825-0936, tiguelaw@msn.com; Sal Elazab, owner-app, 612-998-3908

Planning Staff And Phone: Lonnie Nichols, 612-673-5468

Ward: five (5) **Neighborhood Organization:** Downtown Minneapolis Neighborhood Association

Existing Zoning: B4S (Downtown Service District) and DP (Downtown Parking Overlay District)

Proposed Conditional Use: Extended hours of operation for Tobacco shop-w/C-store and restaurant.

Concurrent Review: CUP for adjoining storefronts in same building with same ownership.

Background: Abro, LLC, dba the Sky Cafe and Downtown Tobacco located on the ground floor of the building located at 428 Hennepin Avenue in the B4S (Downtown Service District) and DP (Downtown Parking Overlay District) has filed application to operate both the said businesses for extended hours of operation, from 7:00 a.m. to 3:00 a.m. Sunday through Thursday and 7:00 a.m. to 4:00 a.m. Friday and Saturday. Regular hours of operation for the B4S are 6:00 a.m. to 1:00 a.m. Sunday through Saturday. Downtown Tobacco (428 Hennepin Avenue) has been in operation since 1998 and the Sky Cafe (8 North 5th Street) since 1999. CPED zoning staff has determined the property has existing (grandfather) rights under chapter 530.10 (8) of the 1963 code to operate from 6:00 a.m. to 1:00 a.m. Monday through Friday and 6:00 a.m. to 2:00 a.m. Saturday and Sunday. The property has security cameras located on the interior and exterior of the building. A CUP report will be written for each storefront due to existing but separate primary entrances.

Findings As Required By The Minneapolis Zoning Code for the Conditional Use Permit for Extended Hours of Operation Application for the Downtown Tobacco-428 Hennepin:

- 1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

While the use of tobacco products has a clear and negative impact on public health, its sale to, and use by, adults is legal. This is an existing use that has applied for extended hours of operation.

- 2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

Assuming compliance with the following applicable Specific Development Standards required by section 536.20 of the zoning code, the use should not prove injurious to the use and enjoyment of surrounding properties. Specific Development Standards for tobacco shops include the following:

Tobacco shop.

- (1) Back-lighted signs, back-lighted awnings, portable signs, temporary signs and freestanding signs shall be prohibited.
- (2) The window and door area of any existing first floor facade that faces a public street or sidewalk shall not be reduced, nor shall changes be made to such windows or doors that block views into the building at eye level.
- (3) For new construction, at least thirty (30) percent of the first floor facade that faces a public street or sidewalk shall be windows or doors of clear or lightly tinted glass that allow views into and out of the building at eye level.
- (4) The use of bars, chains or similar security devices that are visible from a public street or sidewalk shall be prohibited.
- (5) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

Given that the proposed use would be housed in an existing building, standard number three is not applicable in this instance. The surrounding area is fully developed and operates as a late night entertain district with extended hours of operation. Uses closest to Downtown Tobacco include Dream Girls, Gay Nineties, Auggies, the Lumber Exchange building, and surface area parking lots.

Staff uses the following criteria to determine compatibility of extended hours with the surrounding area:

- a) Proximity to permitted or conditional residential uses. The site is zoned B4S and is located in the Downtown Parking Overlay District. It is bordered and surrounded by B4S and B4 (Downtown Business District) zoned properties in the immediate block and adjacent blocks. It has been a consistent policy for planning staff to recommend denial if there are residential uses located on the same block as the proposed use. In this case, there are no zoned residential uses or known legally nonconforming residential uses on the same block.
- b) Nature of the business and its impacts of noise, light and traffic. Down Tobacco proposes to operate from 7:00 a.m. to 3:00 a.m. Monday through Thursday, and 7:00 a.m. to 4:00 a.m. Friday, Saturday, and Sunday. The presence of delivery drivers and pedestrians coming and going from the site may increase the noise and traffic in the area during extended hours, but it should have a negligible impact on the immediate surroundings. Downtown Tobacco is surrounded by bars, nightclubs, and adult entertainment uses-dance bars that serve alcohol and operate during extended hours.
- c) Conformance of use. The use is existing (since 9/9/98) and permitted in the B4S District with the Specific Development Standards cited previously in this report.
- d) Complaints received. Staff received a Calls for Service report from the Minneapolis Police Department that listed 238 calls for 428 Hennepin Avenue (Downtown Tobacco) and 72 calls for 8 North 5th Street (Sky Cafe) from January 1, 2000 through September 8, 2003. This is a total of 310 calls ($238 + 72 = 310$) over 44 months or an average of approximately 7 calls per month. While the number of calls is a concern, staff feels that it would be difficult to prove that Downtown Tobacco and the Sky Cafe are directly responsible for causing the reported behavior due to the adult entertainment and nightclub uses located nearby which have liquor licenses. The property has security cameras located on the interior and exterior of the building.

3. Will have adequate utilities, access roads, drainage and/or other necessary facilities.

The site is adequately serviced by city streets, utilities, water and sewer. The site is not served by on-site off-street parking. Excess public parking is available nearby lots and ramps.

4. Will take measures to minimize traffic congestion in the public streets.

The use is existing, relatively small in scale, and not expected to generate significant traffic congestion in the surrounding area. Regular bus service and bus stops are located near the building, including a bus shelter directly in front of Downtown Tobacco on Hennepin Avenue. There is a Light Rail Transit station under construction on Fifth Street in front of the Sky Cafe. The LRT line is scheduled to be operational in 2004.

5. Is consistent with the applicable policies of the comprehensive plan.

Downtown 2010 is the referenced document of the Minneapolis Plan for the Downtown core. Downtown 2010 designates the area along Hennepin Avenue between 5th and 10th Streets and the Warehouse District as downtown's entertainment district. The Sky Cafe (8 North 5th Street) and Downtown Tobacco (428 Hennepin) are located adjacent to the entertainment district, and provide a restaurant and specialty use venue for those who live or visit downtown and the entertainment district. These businesses reinforce the linking function of streets in downtown and help create vitality and security to the corner of 5th and Hennepin through individual entrances at the street level. The existing storefronts are in conformance with policies one and two (page 14) of the Downtown Physical Setting section of the 2010 plan.

The Minneapolis Plan, Chapter 4.4 states: "Minneapolis will continue to provide a wide range of goods and services for city residents, to promote employment opportunities, to encourage the use and adaptive reuse of existing commercial buildings, and to maintain and improve compatibility with surrounding areas". Extended hours of operation are not specifically covered in the comprehensive plan.

Given that the building is existing, the tobacco shop would neither enhance nor detract from the street's character. The building entrance fronts directly onto the public sidewalk, facilitating pedestrian access.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located, with the approval of this c.u.p.

Staff is not aware of any conflict between the proposed use and the regulations of the B4S or DP Overlay District. Note that the sale of tobacco to a minor is a violation of city ordinance (281.50) and state law (M.S. § 609.685).

Recommendation of the City Planning Department:

The City Planning Department recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit application for extended hours of operation for Downtown Tobacco (BZZ 1380) located at 428 Hennepin subject to the following conditions:

- 1) The tobacco shop shall comply with the following applicable Specific Development Standards of section 536.20 of the zoning code:
 - (a) Back-lighted signs, back-lighted awnings, portable signs, temporary signs and freestanding signs shall be prohibited.
 - (b) The window and door area of any existing first floor facade that faces a public street or sidewalk shall not be reduced, nor shall changes be made to such windows or doors that block views into the building at eye level.
 - (c) The use of bars, chains or similar security devices that are visible from a public street or sidewalk shall be prohibited.
 - (d) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

Findings As Required By The Minneapolis Zoning Code for the Conditional Use Permit for Extended Hours of Operation Application for the Sky Cafe-8 North 5th Street:

- 1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

This is an existing use that has applied for extended hours of operation. The operation of the Sky Cafe restaurant is not detrimental to public health, safety, comfort or general welfare.

- 2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

Assuming compliance with the following applicable Specific Development Standards required by section 536.20 of the zoning code for a restaurant, sit down, the use should not prove injurious to the use and enjoyment of surrounding properties. The Sky Cafe does not serve alcoholic beverages.

Restaurant, Sit down-no alcohol

The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

The surrounding area is fully developed and operates as a late night entertain district with extended hours of operation. Uses closest to Downtown Tobacco include Dream Girls, Gay Nineties, Auggies, the Lumber Exchange building, and surface area parking lots.

Staff uses the following criteria to determine compatibility of extended hours with the surrounding area:

Proximity to permitted or conditional residential uses. The site is zoned B4S and is located in the Downtown Parking Overlay District. It is bordered and surrounded by B4S and B4 (Downtown Business District) zoned properties in the immediate block and adjacent blocks. It has been a consistent policy for planning staff to recommend denial if there are residential uses located on the same block as the proposed use. In this case, there are no zoned residential uses or known legally nonconforming residential uses on the same block.

Nature of the business and its impacts of noise, light and traffic. The Sky Cafe proposes to operate from 7:00 a.m. to 3:00 a.m. Monday through Thursday, and 7:00 a.m. to 4:00 a.m. Friday, Saturday, and Sunday. The presence of delivery drivers and pedestrians coming and going from the site may increase the noise and traffic in the area during extended hours, but it should have a negligible impact on the immediate surroundings. The Sky Cafe is surrounded by bars, nightclubs, and adult entertainment uses-dance bars that serve alcohol and operate during extended hours.

Conformance of use. The use is existing (since 10/29/99) and permitted in the B4S District with the Specific Development Standards cited previously in this report.

Complaints received. Staff received a Calls for Service report from the Minneapolis Police Department that listed 238 calls for 428 Hennepin Avenue (Downtown Tobacco) and 72 calls for 8 North 5th Street (Sky Cafe) from January 1, 2000 through September 8, 2003. This is a total of 310 calls ($238 + 72 = 310$) over 44 months or an average of approximately 7 calls per month. While the number of calls is a concern, staff feels that it would be difficult to prove that Downtown Tobacco and the Sky Cafe are directly responsible for causing the reported behavior due to the adult entertainment and nightclub uses located nearby which have liquor licenses. The property has security cameras located on the interior and exterior of the building.

3. Will have adequate utilities, access roads, drainage and/or other necessary facilities.

The site is adequately serviced by city streets, utilities, water and sewer. The site is not served by on-site off-street parking. Excess public parking is available nearby lots and ramps.

4. Will take measures to minimize traffic congestion in the public streets.

The use is existing, relatively small in scale, and not expected to generate significant traffic congestion in the surrounding area. Regular bus service and bus stops are located near the building, including a bus shelter directly in front of Downtown Tobacco on Hennepin Avenue. There is a Light Rail Transit station under construction on Fifth Street in front of the Sky Cafe. The LRT line is scheduled to be operational in 2004.

5. Is consistent with the applicable policies of the comprehensive plan.

Downtown 2010 is the referenced document of the Minneapolis Plan for the Downtown core. Downtown 2010 designates the area along Hennepin Avenue between 5th and 10th Streets and the Warehouse District as downtown's entertainment district. The Sky Cafe (8 North 5th Street) and Downtown Tobacco (428 Hennepin) are located adjacent to the entertainment district, and provide a restaurant and specialty use venue for those who live or visit downtown and the entertainment district. These businesses reinforce the linking function of streets in downtown and help create vitality and security to the corner of 5th and Hennepin through individual entrances at the street level. The existing storefronts are in conformance with policies one and two (page 14) of the Downtown Physical Setting section of the 2010 plan.

The Minneapolis Plan, Chapter 4.4 states: "Minneapolis will continue to provide a wide range of goods and services for city residents, to promote employment opportunities, to encourage the use and adaptive reuse of existing commercial buildings, and to maintain and improve compatibility with surrounding areas". Extended hours of operation are not specifically covered in the comprehensive plan.

Given that the building is existing, the Sky Cafe would neither enhance nor detract from the street's character. The building entrance fronts directly onto the public sidewalk, facilitating pedestrian access.

6. **And, does in all other respects conform to the applicable regulations of the district in which it is located, with the approval of this c.u.p.**

Staff is not aware of any conflict between the proposed use and the regulations of the B4S or DP Overlay District. Note that the sale of tobacco to a minor is a violation of city ordinance (281.50) and state law (M.S. § 609.685).

Recommendation of the City Planning Department:

The City Planning Department recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit application for extended hours of operation for the Sky Cafe (BZZ 1380) located at 8 North 5th Street subject to the following conditions:

- 1.) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.
- 2.) The extended hours are for the ground floor seating area only.

CITY PLANNING COMMISSION

**317 City Hall
Minneapolis, Minnesota 55415**

Hearing held on Monday, September 22, 2003

5. Sky Café-8 (BZZ-1340, Ward 5)

428 Hennepin Avenue (Lonnie Nichols)

A. Conditional Use Permit

Application by Abro, LLC, dba the Sky Cafe and Downtown Tobacco for a conditional use permit for extended hours of operation (from 7:00 a.m. to 3:00 a.m. Sunday through Thursday and 7:00 a.m. to 4:00 a.m. Friday and Saturday) at 428 Hennepin Avenue

Motion: The City Planning Commission adopted the findings and **approved** the conditional use permit application for extended hours of operation for Downtown Tobacco (BZZ 1380) located at 428 Hennepin for a trial period of one year, with review before the Planning Commission after a year, subject to the following conditions:

1. The tobacco shop shall comply with the following applicable Specific Development Standards of section 536.20 of the zoning code:
 - (a) Backlighting signs, backlit awnings, portable signs, temporary signs and freestanding signs shall be prohibited.
 - (b) The window and door area of any existing first floor facade that faces a public street or sidewalk shall not be reduced, nor shall changes be made to such windows or doors that block views into the building at eye level.
 - (c) The use of bars, chains or similar security devices that are visible from a public street or sidewalk shall be prohibited.
 - (d) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

B. Conditional Use Permit

Application by Abro, LLC, dba the Sky Cafe and Downtown Tobacco, located at 428 Hennepin Avenue for a conditional use permit for extended hours of operation (from 7:00 a.m. to 3:00 a.m. Sunday through Thursday and 7:00 a.m. to 4:00 a.m. Friday and Saturday) at 8 North 5th Street.

Motion: The City Planning Commission adopted the findings and **approved** the conditional use permit application for extended hours of operation for the Sky Cafe (BZZ 1380) located at 8 North 5th Street for a trial period of one year, with review before the Planning Commission after a year, subject to the following conditions:

1. The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

2. The extended hours are for the ground floor seating area only.

TESTIMONY

Staff (Lonnie Nichols) presented the report and recommendation to the City Planning Commission.

President Martin: Public Hearing is opened, anyone willing to speak to Item #5? Come Forward.

Madam Chair and Commissioners, **I am Inspector Rob Allen**; I am a Commander for the 1st Police Precinct Downtown. I am here today to talk about the general issue of extending operating hours for business in the Downtown Entertainment District, and to address this address specifically. I have concerns about the extension of hours past 2:00 a.m. for any business downtown. One of our real challenges downtown is the hours after 2:00 a.m. when we have several thousand people exiting bars. The fact that we have a huge problem with people loitering in the streets, it is the hour of the day starting at 2:00 a.m. when we have the most fights, the most intense for Police services. Our middle watch shift leaves at 3:15 a.m., so starting at that time I have four (4) Police Officers for the entire downtown area, including Cedar Riverside. Past 3:15 a.m. I have very little Police coverage and that is necessitated by the fact that we are so busy leading up until 3:15 a.m. that we shift our resources to the busiest hours of the day, which includes daytime when we have 160,000 people downtown, and the middle watch when we can have anywhere from 25,000 to 100,000 people in the downtown area for entertainment venues. I think that extending business hours is going to require a tremendous commitment from the Police Department for any business, but specifically this business we would really need to reallocate resources and incur severe overtime if you would extend the hours. No fewer than a dozen times in 2003 alone, Police have been called and had to call out for numerous squads, over five squads for help, in dealing with fights at that location. In the past two years we have had separate instances of rape at that location. We have had one shooting at that location. We had somebody on August 11th, slashed in the face with a glass jar at that location, requiring extensive medical care. We have had in the past year; six Officers assaulted at that location while responding to calls. Furthermore, we have had problems getting cooperation from the management of that business in dealing with the problems there. When we found out that they were in violation and staying past the time they were allowed to stay open, we sent them a letter and asked them to close at the appropriate time, they refused, we had to go and shut the down. We walked away after shutting them down, and they waited until we were gone and opened right back up again past those hours. This is a business where we have had tremendous challenges, and I think allowing them to stay open will create further challenges. Thank you.

Martin: Commissioner LaShomb has a question for Inspector Rob Allen.

Lashomb: Are there other businesses within the three-block proximity that are opened until 4:00 a.m.?

Inspector Rob Allen: There are no businesses open until 4:00 a.m. that I am aware of. The only business that is opened past 2:00 a.m. is Pizza Luce', which closes at 3:00 a.m. and they actually stop serving at 2:30 a.m. So people are out of the business at 3:00 a.m.

LaShomb: So, if we did not support the staff recommendation we wouldn't be in a situation of having other business that were allowed this right, but this one would not be?

Inspector Rob Allen: That's correct.

My name is Randall Tigue, I am an Attorney and my office is 3960 Minnehaha Avenue South, Minneapolis and I represent the applicants in this matter. I am not going over the various items in the application, but I will address myself solely on the remarks that you just heard because, I think they range from vastly exaggerated to totally false. Let's first take a look at the calls for Police services. I think it is important to know; can we get the photograph of the business back up? Up until November 2001, what is now on the corner as the tobacco shop and part of the Sky Café' was occupied by Pops Arcade, which was a video game and pinball machine arcade. Frequented by lots of people, by minors with great frequency, and the scene of a great law enforcement problem. Pops Arcade closed in November 2001, and my clients business went in their place. Now I would invite you to turn to the reports for Police services as it relates to 428 Hennepin Avenue. Beginning with the page that says 428 Hennepin Avenue, you will see an entire page. 11100 to 52100 all of those calls were to Pops Arcade. Turn to the next page, beginning from 61100 to 11100 all of those calls were to Pops Arcade.

Martin: Mr. Tigue are you going to claim that all of the calls up until November 2001 we for another use?

Randall Tigue: They were all for another use and if you look at when my client took over that location, you will have to go about four pages, five pages, six pages in and to the last page. The first two calls, then the remaining calls, are calls to my clients location. There are five or six pages of calls that were to the business when it was the Pops Arcade. Once my client took over there is a dramatic reduction in call for Police services. It is a tiny fraction of what it was before my client got in there. The second thing that I want to address, is the question that Commissioner LaShomb addressed. Are there any other businesses open during late hours? And the answer is "yes". This is by no means the only business. Pizza Luce' as indicated is open until 3:00 a.m. All the bars are now open until 2:00 a.m. There was in the City of Minneapolis an ordinance permitting bars that offered entertainment to remain open until 3:00 a.m. The city repealed that ordinance, but Rick's Cabaret obtained an injunction to prevent the city from stopping them from closing without a license, and that injunction remains in full force and effect, and the city has taken the position that as long as that injunction remains in effect, all of the entertainment venues; Qwest, First Avenue and the like, that

previously had licenses to remain open until 3:00 a.m. will remain open until 3:00 a.m. Dream Girls next door to this establishment is open until 3:00 a.m.; 418 Club is opened until 3:00 a.m., Déjà Vu is opened until 3:00 a.m., in fact far from this being an isolated incidence in the sense that if the staff recommendation is being closed down, my clients establishment will be virtually the only one that has operated for late hours that will be closed down. Now, I think what else is important to note is when my clients first opened their businesses in 1998 or 1999, on the site of the business before they expanded to the corner, they were opened until 4:00 a.m. My client previously operated "Slice of New York" in the Plymouth Building for years, and that was opened until 4:00 a.m. My clients have been opened these late hours all the way up until the last two months, when Commander Allen came by and threatened them with arrest unless they closed down.

This isn't something new this has been going on for years and there hasn't been a problem. In fact, again if you look at the calls for Police services, when my clients went into this establishment, Police calls and calls for Police services was dramatically reduced. Now, Commander Allen tells you that after 3:15 a.m. he has only four Officers available. What he doesn't tell you is that my client, every weekend has three or four off-duty Officers paid by him, inside the establishment, to make sure there are no problems within that establishment. When he tells you there were shootings and knifings and fights at that location, what he is talking about is incidence that occurred with phone calls made from that location. So, when a fight occurs in the parking lot next to Augies, and the phone call is made from my clients location, that fight in the parking lot is some how attributed to my clients establishment. My client's establishment doesn't contribute to loitering after closing. My client's establishment contributes to people leaving the bars, going to get a late night bite to eat after the bar closed and going home. That is not a threat to public safety, and in fact it enhances public safety. I submit that we are much better off having people leaving the bars, going to my client's establishments, eating pizza for an hour or two, and driving home, than we are having them drive directly home from the bars. We are asking for nothing more here than what has gone on for years, what has gone on since the first day this establishment has opened and continued all the way up until the past two months. My clients are not responsible for all the crime and violence that occurs on the corner of 5th and Hennepin. They are doing their best to stop it. But one other thing that I want to point out and it is in the application. My client's establishment is immediately in front of the light rail system. The 5th Street in front of my client's establishment has been torn up for months. As a result of that, my clients business during daytime hours is essentially non-existent. The only way my client can stay in business is to get the late night hours that they have had for years. And it is eminently reasonable and for the reasons we set forth, fully consistent with the requirements of the city ordinance and the comprehensive plan. Thank you.

Martin: Thank you. Others wish to speak to item #5? Commissioner Mackenzie do you have a question?

Mackenzie: Mr. Tigue I have a question for you? I am referring to your letter that is referencing the application for the Conditional Use Permit. In that letter you state that the businesses have been in operation since 1998 and 1999. Can you explain to me the relationship between Pops Arcade and your client's?

Mr. Tigie: If you can get the photograph back and up again, I'll show you. If you look where my finger is, my client's establishments originally opened up in 1988 and 1989 in this area right here. That was the original location of the pizza establishment and the tobacco shop. Pops Arcade occupied this entire area on the corner. When Pops Arcade closed in November 2001, the tobacco shop moved to the corner location and the pizza shop expanded. So, my client's haven't been in business since 1988 and 1989, but until November 2001, the corner location was operated by Pops Arcade and it was during that period of time that half a dozen pages of Police call got incurred.

Mackenzie: So they were tenants at that time? Correct?

Mr. Tigie: Yes – my client's were tenants in that smaller location and Pops were also tenants in the building. And Pops lease expired in November 2001 or was not renewed and at that point my client's moved the tobacco shop to the corner and expanded the pizza shop.

Martin: Others who wish to speak to Item #5? Inspector Allen, new information?

Schiff: I have questions for Inspector Allen. Can you respond to some of the statements that were made by Mr. Tigie and does that reflect in your professional opinion the kind of situation you have been seeing with these properties over the past couple of years?

Inspector Allen: No it doesn't. I specifically took and did a report for my own benefit that shows the incidences that specifically occurred at the Sky Café and related businesses. The two rapes that I mentioned earlier both occurred in the Sky Café, one in the restroom on the upstairs porch in the club that occurred on 5-31-02 after it became the Sky Café. The other one occurred on January 12th, 2002 after it became the Sky Café. The shooting occurred on March 12th, 2003 in the pizza stand in the original part of the café. The assault where a victim was slashed in the face with a glass also occurred in the pizza café downstairs, 10 North 5th Street. We had on June 14th, 2003 – someone smashed out a glass window, and people thought it was shots being fired, which resulted in a stampede on the staircase where a woman broke her leg. On February 21st, 2003 we had a fight at the club involving several gang members and we were asked to close the club by the management of the club. I could go through each one of these incidences, but my point is these are club specific. I am not talking about things that where calls were made from a pay phone. I am talking about specific incidences that occurred at those properties.

Schiff: Thank you for that clarification. Can you submit that list if you haven't already to the clerk so we can have that for the record? Thank you.

Martin: Anyone else wishing to speak about Item #5?

Public Hearing Closed

Martin: Commissioners just so you have this in your head to think about. In the past when the Commission has been asked to extend hours in locations where we were not quite sure that it was exactly the appropriate thing to do forever, we have on many

occasions granted the extensions for a time certain period, a year or so, with a request for a specific report, in this case the Police Department after a year and at that point they could either continue or revoke the extended hours. Just an item for information, this is not a suggestion, that is just what has happened. Commissioner Schiff?

Schiff: In looking at the staff report one of the first findings for a Conditional Use Permit for extended hours of operation is that the use will not be detrimental to or endanger the public health, safety, comfort or general welfare. I don't believe the staff interpretation of this finding is consistent with how we have done this in the past. The staff report talks about the use of tobacco and how tobacco may impact public health. I think there is more to consider here about how this use overall, not just the products they sell may impact the public health. I would be concerned about giving a time specific extension of these hours to see how they do, because I don't think they are doing well with their existing hours. So, I am going to move to deny the application.

Martin: Commissioner Mackenzie or Hohmann, I can't see. Commissioner Hohmann, okay.

Hohmann: I find the Police report real interesting. I didn't catch that at all, when I look at it I see dramatically reduced calls since the business took over the corner. As far as some of the specifics mentioned by the Officer, it seems to me within the last six months there was a rape, 5:00-6:00 in the afternoon, two blocks down right out in the open. I think we are seeing a lot of things that are not necessarily cause and effect here. There are muggings on Nicollet or Hennepin Avenue, and we are not going to close down Marshall Fields or one of the spots along Hennepin Avenue. One of my favorite things when I visit New York City is to be able to go out twenty-four hours a day, and that is often times in the middle of the night to get a good deli sandwich and a cold beer. The light rail is right out front here and we are looking to use that light rail to bring people in and out of town without vehicles. We are looking at more and more people looking for more extended hours of business and it does make sense to me to see activity that is not necessarily specific to this business use an excuse to keep this business from operating later hours during the evening. I just don't see it. I guess that I would support the staff recommendation.

LaShomb: This is really a tough one. And it is tough because I think we should want to be supportive of public safety and security in the city, but the inherit problem with this is when the city made a decision to extend bar hours in this area to 2:00 a.m., it effectively opened the door. It opened the door to other businesses that want to be in support of the bar business. I think there is a lot to be said for not allowing a situation where all the businesses close at 2:00, and so everyone who has enjoyed all that bar service, ought to jump in their cars, so we can have chaos on city streets and on the highway. I think it is a good idea to have a place where people can kind of spend an hour and unwind. I think the convention business in Minneapolis wants restaurants to be open a couple hours later than bars. I am surprised that they are not here one way or another. I guess that my kind of feeling is that when we decided we were going to keep bars open until 2:00, we should have started thinking about how that was going to impact other businesses in the downtown area. How the Policing was going to be done, which of course is a tough issue when you have a budget the way the Minneapolis City budget operates today. So, I am going to have to oppose the Schiff motion, not because I don't

think that we should support security and Policing, but just because we really set the policy already, but I do think that I would like to do this on a trial basis. The Chair read my mind on that. I think that it is hard to blame a new owner for everything that has happened in the past, but it isn't always the businesses that cause the problem. The problem may just simply stay there regardless of who the owner is. So, I am not going to support the Schiff motion and if it passes, it passes and if it doesn't, I am going to propose a motion to support the staff recommendation, with a one-year trial.

Martin: Commissioner Johnson, were you wanting to ask a question.

Johnson: I just want a clarification on where the issues were occurring and which business was going to be open. Is it the Club on the second story, where all the problems occur?

Lonnie Nichols: Commissioner Johnson, I can not, I guess state with certainty exactly where all the calls for service came from, but the second floor operation of this property is not part of this application. Both Conditional Use Permits, one for Downtown Tobacco and the small C-Store and one for Sky Café are both at the ground floor.

Hohmann: I would also like to suggest that it is not necessarily location specific when we see these problems, it is people specific. You have people down there acting in certain ways and the bad affects of that show up but it is not necessarily the establishments, I don't think. People can go into a bar and drink responsibly and they can leave and they can have a good time and they might want to get a cigar on this corner Tobacco Shop before they get on the Light Rail and go home. I don't think that we should point fingers necessarily at the establishments, because it is the people's behavior wherever they were, that creates the problem, not the business.

Martin: We are not going to encourage people to smoke cigars on the Light Rail, right? Okay. Commissioner Johnson?

Johnson: I just like to support LaShomb and what he had said.

Martin: The motion before us is a motion to deny the CUP for extended hours. All those in favor please signify by saying aye - that was two. Yes. Against? All right that was four against.

Substitute Motion - Commissioner LaShomb: I will move to approve the staff recommendation for Item #5 and with one stipulation and I am not quite sure how that fits in here, but I will put this on a one-year trial basis with a mandatory report back at the end of the twelve months. I guess we have to figure out back to who – back here (Planning Commission), that is fine with me.

Martin: Is there a second for that?

Johnson: Seconded the motion.

Martin: Any discussion for that? I think that we have already had a discussion. All in favor of that motion please signify by saying aye. Motion Carries. Thank you.

